



## European Banking Industry Committee

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European Banking Federation (EBF) • European Savings Banks Group (ESBG) • European Association of Cooperative Banks (EACB) European Mortgage Federation (EMF) • European Federation of Building Societies (EFBS)  
European Federation of Finance House Associations (Eurofinas)/European Federation of Leasing Company Associations (Leaseurope)  
European Association of Public Banks (EAPB)

2 June 2017

European Supervisory Authorities (ESAs)

**EBIC response to consultation on Draft Joint Guidelines under Article 25 of Regulation (EU) 2015/847 on the measures payment service providers should take to detect missing or incomplete information on the payer or the payee, and the procedures they should put in place to manage a transfer of funds lacking the required information**

### **General comments**

The European Banking Industry Committee (EBIC) would like to thank the European Banking Authority (EBA) and the other European Supervisory Authorities (ESAs) for providing EBIC the opportunity to comment on the draft joint guidelines under Article 25 of regulation 2015/847, the Funds Transfer Regulation (FTR). We think it is important to keep a constant dialogue in order to ensure that any guidelines or new standards are in line with prevailing best practices of the industry.

It is for us particularly important that Payment Service Providers (PSPs) are not unnecessarily burdened by an extensive interpretation of the Regulation's provisions. In particular, it should be kept in mind that as far as funds transfers are concerned new technology implementation – since the adoption of the Common Understanding – has not made giant leaps across the entire financial sector and real time monitoring is yet only possible in limited cases. Furthermore, we should not forget that the future guidelines will have to be implemented by a large variety of financial institutions, including smaller and less complex ones and this requires that due consideration be given to the principle of proportionality.

Moreover, with a view to the implementation of the new guidelines and the necessary detailed discussions preparing it, it is important that financial institutions be given at least a year to implement the changes in their IT systems and compliance departments. We understand that there could be a “period of grace” between the moment of publication until the guidelines have been translated into the different official languages and that Member States have notified whether they will “comply or explain”. This should be clearly explained when publishing the new guidelines.

## **Title I: Definitions**

Before addressing the consultation paper questions, EBiC would like to comment in the definitions used.

EBiC would like firstly to stress that the terms „receiving PSP“ and „sending PSP“ are only appropriate for payments transfers. This does not make sense in a direct debit context. In order to ensure a correct application of the Regulation to the direct debit transactions, we suggest introducing the definitions below:

- The PSP of the Payer means the PSP originating (or sending) the transfer of funds.
- The PSP of the Payee means the PSP receiving the transfer of funds.

Regarding “risk” assessments EBiC would like to stress that in the context of the FTR this should focus on whether information in transactions is lacking or not. Including AML/CFT aspects in accordance with the Anti-Money Laundering Directive is inappropriate in this context.

The definition of „meaningless information“ assumes that the check is done by a physical person. In consideration of the high amount of transactions (112 bn transactions in 2015 in Europe) neither this nor the automatization of this would be feasible. In some countries an initial as a first name might be considered complete. We propose to delete this example.

The definition of „incomplete information“ assumes that completeness can be objectively verified. However a European bank will generally not be able to check if for example an address in South Korea is complete or not, neither automatically nor manually.

## Responses to questions for consultation

**Q1: Do you agree with the general considerations in Chapter 1? In particular, do you agree that these are necessary to ensure an effective, risk-based and proportionate approach to complying with Regulation (EU) 2015/847? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out what you consider to be the common principles that apply to both, the PSP of the payee and the intermediary PSP, and why.**

EBIC believes some provisions are disproportionate and go beyond what is required in the regulation. EBIC also sees the need for some clarifications under this Chapter:

### *Paragraph 8 and 9*

The terms used correspond neither to the EU Payment Services Directive nor to industry practice. Instead, it should be specified that “PSPs have to determine for each payment whether they act as the PSP of the payer, the PSP of the payee or as an intermediary PSP in order to meet the requirements of the FTR.”

### *Paragraph 11 and 13*

Checking related payments has been common practice since the entry into force of the first FTR. However, it is not clear why it seems now necessary to identify such payments over a period of six months. To illustrate this it means that approximately 100 billion yearly transactions that would have to be coordinated just in Europe. Also, EBIC would like to stress that it is extremely difficult to identify ‘linked transactions’ as generally transactions are monitored separately. It is important to stress that the FTR states that “for transfers of funds exceeding EUR 1 000, whether those transfers are carried out in a single transaction or in several transactions which appear to be linked” checking obligations apply. Defining a time frame seems to imply that to correctly perform an analysis of the linked transactions – all money transfers (irrespective of the transferred sums) would have to be checked on potential links with other transactions over a longer period of time than under the first FTR. For a bank this would mean that all clients need to be identified (before each transfer and irrespective of the transferred sum), in order to allow for a conclusive ex-post analysis of possibly linked transactions to take place and the data to be submitted. Such an obligation would be disproportionate and would seem to contradict Art. 2 paragraph 5 of the FTR. PSPs should continue to check for linked transactions as already required by the first FTR. We propose deleting a concrete time frame as we do not have any indication that the current practice is not effective and as the provision creates uncertainties.

Moreover, Article 2 of the Regulation sets out that the PSPs cannot benefit from exemptions from the Regulation when a payment card, an electronic money instrument or a mobile phone, or any other digital or IT prepaid or postpaid device with similar characteristics is used in order to make a person-to-person transfer of funds. In this respect EBiC would welcome more clarity on what kind of transactions should be considered as “person-to-person” transfers of funds.

**Q2: Do you agree that the expectations on intermediary PSPs and PSPs of the payee in Chapter II are proportionate and necessary to both comply with Regulation (EU) 2015/847 and ensure a level playing field?**

**In particular, do you agree with:**

- **The steps PSPs should take to detect and manage transfers of funds with missing information of inadmissible characters or inputs?**
- **The steps PSPs should take to detect and manage PSPs that are repeatedly failing to provide the required information? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out at what you believe PSPs should do instead, and why.**

EBIC agrees with the steps that intermediary PSPs and PSPs of the payee should take to detect transfers of funds with inadmissible characters or inputs. The Guidelines set out that these PSPs should ensure that its system:

- contains all the fields necessary to obtain the information required by Regulation 2015/847. (For SEPA and intra-Union transactions, this includes the account number or IBAN of the payer and the payee or a unique transaction identifier);
- automatically prevents the sending or receiving of payments should inadmissible characters or inputs be detected”.

Regarding the detection of missing information, EBIC would like to raise the point that meaningless or even "obviously" meaningless information is not mentioned in Article 8 of Regulation 2015/847/EU. In addition, we consider that it is difficult to detect such kind of information because it is not technically possible to identify whether the information (letters, numbers, etc.) is meaningless or real – neither automatically nor manually.

#### *Paragraphs 25 and 27*

The risk assessment should focus solely on the existence and completeness of information. It is not appropriate to take account of the amount limits, as well as States or payment service providers with high "ML / TF risk". Furthermore, EBIC does not share the interpretation that high-risk transfers of funds should be monitored in real time in particular on the criterion of a certain (high) value and where the payer or the payee are based in a country associated with high ML/TF risk. In both situations, the possibility offered by the Regulation 2015/847/EU to choose between ex-post and real time monitoring should be maintained. Indeed, the assessment of whether or not the amount of a specific transaction is high depends on the business activity rather than on a general threshold applicable in all circumstances. Having in place such systems

would imply triggering a substantial amount of real-time alerts which will be difficult or even impossible to process in real-time. In the end, such a system would be ineffective.

*Paragraph 26*

EBiC would welcome clear cut definitions of “random” and “targeted” sampling because of the serious impact on checking procedures.

*Paragraph 38*

EBiC considers that a deadline of three or five working days is too short, as several payment service providers can be involved in the payment chain. This is especially important in the light of increased requirements on intermediate PSPs and the administrative burden connected with requests for information on complex transactions. It should be at least seven days for Intra-Union or more for payment from outside the Union as defined in the CEBS/CEIOPS/CESR Common Understanding of October 2008 (paragraphs 23 and 24).

*Paragraph 51*

Reporting on a monthly basis appears to be excessive as it increases the amount of information on payments that needs to be collected, analyzed and reported. A three-month-period as applied today in many Member States deems sufficient. It should also be clarified that reporting can be done on aggregated basis and not for each single transaction.

*Paragraph 52*

Reporting in such as detailed fashion appears excessive. It should not be required to report each period of time for which breaches that were identified and the reasons a PSP may have given to justify repeated failures.

Finally, we would like to highlight that, according to the table provided in annex 1, not all the information on the payer listed by the Regulation is required to accompany a transfer of funds. The information laid down in the Regulation 2015/847/EU – the payer's address, official personal document number, customer identification number or date and place of birth – seems to be required unlike under the previous Regulation. We would therefore like to have a confirmation of this interpretation because Regulation 2015/847/EU is not clear on this. Indeed, a different interpretation, which implies that all the information concerning the payer listed by the Regulation has to accompany the transfer, would cause a huge increase in compliance risks and costs.

**Q3: Do you agree with the provisions for intermediary PSPs in Chapter III?**

**If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think intermediary PSPs can meet their obligations in Article 10 of Regulation (EU) 2015/847 instead.**

No comments

**Q4: Do you agree with the provisions for PSPs of the payee in Chapter IV? If you do not agree, clearly set out your rationale and provide supporting evidence where available. Please also set out how you think PSPs of the payee can meet their obligations instead.**

We would like to again draw your attention to the apparent contradiction between the guidelines on linked payments with the Member State option in Article 2 Paragraph 5 of the of the FTR to exclude certain payments within a Member State's territory from the FTR.